

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JOHN RICHARD BRINSFIELD,
Petitioner.

No. 2 CA-CR 2018-0170-PR
Filed October 29, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Petition for Review from the Superior Court in Pinal County
No. S1100CR17938
The Honorable Henry G. Gooday, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Kent P. Volkmer, Pinal County Attorney
By Geraldine L. Roll, Deputy County Attorney, Florence
Counsel for Respondent

John R. Brinsfield, Eloy
In Propria Persona

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MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Brearcliffe concurred.

S T A R I N G, Presiding Judge:

¶1 Petitioner John Brinsfield seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4 (App. 2007). Brinsfield has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, at which he was represented by Robert Cimino, Brinsfield was convicted of aggravated assault, and the trial court sentenced him to an enhanced, aggravated, thirteen-year prison term. This court affirmed his conviction and sentence on appeal, during which Brinsfield was represented by Gary Brown. *State v. Brinsfield*, No. 2 CA-CR 93-0649 (Ariz. App. Nov. 14, 1996) (mem. decision). Brinsfield sought post-conviction relief in 1996, represented again by Brown.¹ The trial court summarily denied relief, and no petition for review was taken.

¶3 In 1998, Brinsfield again sought post-conviction relief, this time represented by James Logan. After counsel filed a notice stating he was unable to find any issues to raise in a Rule 32 proceeding, Brinsfield filed a pro se supplemental petition, arguing various claims, including several claims of ineffective assistance of counsel. Brinsfield withdrew that petition after a hearing.

¶4 Brinsfield next sought post-conviction relief in 2013, represented by Paul Banales. In that proceeding, Brinsfield asserted he had

¹Brinsfield had also filed a motion for post-conviction relief in 1994, after which he requested the preparation of a post-conviction relief record. The court denied the record request and directed counsel to produce the record to Brinsfield. Although the record before us does not show whether the trial court ordered the first proceeding dismissed, it treated the petition filed in 1996 as a second proceeding.

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been illegally sentenced. The trial court denied relief, and this court granted review, but denied relief on review as well. *State v. Brinsfield*, No. 2 CA-CR 2014-0212-PR (Ariz. App. Sept. 15, 2014) (mem. decision).

¶5 In the current proceeding, Brinsfield sought “the ability to file a first, initial review proceeding,” arguing Brown had represented him on appeal and in his first Rule 32 proceeding,² entitling him to a new proceeding under *State v. Bennett*, 213 Ariz. 562 (2006).

¶6 In *Bennett*, the court concluded that because an attorney cannot raise a claim of his or her own ineffectiveness, Rule 32.2(a)(3) does not preclude a claim of ineffective assistance of appellate counsel when raised in a second petition for post-conviction relief if the petitioner was represented by the same attorney on appeal and in the first Rule 32 proceeding. *Id.* ¶¶ 1, 14-16. *Bennett* does not apply here because, as detailed above, Brinsfield has been represented by several attorneys over the course of his multiple Rule 32 proceedings. Furthermore, this proceeding was initiated four years after his previous proceedings, and more than a decade after his appeal. He may therefore only raise claims pursuant to Rule 32.1(d) through (h). See Ariz. R. Crim. P. 32.4(a). Thus, even were we to accept that his claim is not precluded, a claim of ineffective assistance is barred as untimely, and the trial court could have rejected the claim on that ground alone.

¶7 For these reasons, although we grant the petition for review, we deny relief.

²As detailed above, Brown represented Brinsfield in what the trial court characterized as his second proceeding. We need not resolve this potential issue, however, because we reject his claim on other grounds.